

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

C.P. (CAA) No. 755/KB/2017

connected with

CA (CAA) No. 280(KB) of 2017

In the matter of:

An Application under Sections 232 (3) of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the matter of:

1. KYOTO MERCHANDISE PRIVATE LIMITED a company incorporated under the Companies Act, 1956 and having its registered office at 23A Netaji Subhash Road, 2nd Floor, Room No. 13, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

2. DELIGHT TRADELINK PRIVATE LIMITED a company incorporated under the Companies Act, 1956 and having its registered office at 6 Old Court House Street, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

3. GOODFAITH VANIJYA PRIVATE LIMITED a Company incorporated under the Companies Act, 1956 and having its registered office at 6 Old Court House Street, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

4. CHERRY TIE UP PRIVATE LIMITED a Company incorporated under the Companies Act, 1956 and having its registered office at 23A, Netaji Subhas Road, 2nd Floor, Suite No. 13, Kolkata-700001, West Bengal within the aforesaid jurisdiction.

5. JANHIT TRADELINKS PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and

having its registered office at 203/1, M.G. Road, 3rd Floor, Room No. 298 & 299, Kolkata- 700007, West Bengal within the aforesaid jurisdiction.

6. GOLDMINE TRACOM PRIVATE LIMITED, a Company incorporated under The Companies Act, 1956 and having its registered office at 203/1, M.G. Road, 3rd Floor, Room No. 298 & 299, Kolkata- 700007, West Bengal within the aforesaid jurisdiction.

7. THUKARI AGENCIES PRIVATE LIMITED, a Company incorporated under The Companies Act, 1956 and having its registered office at 203/1, M.G. Road, 3rd Floor, Room No. 298 & 299, Kolkata-700007, West Bengal within the aforesaid jurisdiction.

8. JAIDEEP DEALERS PRIVATE LIMITED, a Company incorporated under The Companies Act, 1956 and having its registered office at 203/1, M.G. Road, 3rd Floor, Room No. 298 & 299, Kolkata-

700007, West Bengal within the
aforesaid jurisdiction.

And

In the matter of:

1. KYOTO MERCHANDISE PRIVATE
LIMITED
2. DELIGHT TRADELINK PRIVATE LIMITED
3. GOODFAITH VANIJYA PRIVATE LIMITED
4. CHERRY TIE UP PRIVATE LIMITED
5. JANHIT TRADELINKS PRIVATE LIMITED
6. GOLDMINE TRACOM PRIVATE LIMITED
7. THUKARI AGENCIES PRIVATE LIMITED
8. JAIDEEP DEALERS PRIVATE LIMITED

- PETITIONERS

CORAM: Shri Jinan K.R., Member (Judicial)

For the Petitioners:

1. Ms. Bidisha Achari, PCS

Date of pronouncement of the Order : 07-02-2018

ORDER

Per Jinan K.R.

The object to this petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation proposed to be made between the Transferee Company, Kyoto Merchandise Investment Company Private Limited(KMPL) and the Transferor Companies, namely Delight Tradelink Private Limited (DTPL), Goodfaith Vanijya Private Limited (GVPL), Cherry Tie Up Private Limited (CTUPL), Janhit Tradelinks Private Limited (JTPL), Goldmine Tracom Private Limited (GTPL), Thukari Agencies Private Limited (TAPL) and Jaideep Dealers Private Limited (JDPL) and their respective shareholders whereby and where under the entire undertaking of the Transferor Companies as a going concern together with all its assets and liabilities will stand transferred to and vested in the Transferee Company with effect from 1st April, 2016 in a manner provided in the Scheme of Amalgamation duly approved by the shareholders of the Petitioner Companies through their written consent to the proposed Scheme of Amalgamation by way of an Affidavit.

A copy of the Scheme of Amalgamation is annexed with the petition and marked with "A".

The petition states that KMPL, Transferee Company is a Non- Deposit taking Non Banking Financial Company bearing Registration No. B.05.03735dated 24/02/2001.

The Company is engaged in the business of purchase and sale of Securities and other financial activities.

It is also stated that DTPL, Transferor Company No. 1, GVPL, Transferor Company No. 2, CTUPL, Transferor Company No. 3, JTPL, Transferor Company No. 4, GTPL, Transferor Company No. 5, TAPL, Transferor Company No. 6 and JDPL, Transferor Company No. 7, are engaged in the business of Trading and Investments activities.

The Scheme envisages amalgamation of the Transferor Companies into Transferee Company, resulting in consolidation of the business in one entity and strengthening the position of the merged entity, by enabling it to harness and optimize the synergies of all the entities. The entire share capital of DTPL and GVPL are being held by JTPL, GTPL and TAPL. GVPL is the holding company of CTUPL holding 54.57% of the paid up capital of CTUPL whereas 45.52% of the paid up capital of CTUPL is held by DTPL. CTUPL is the holding company of JTPL, GTPL and TAPL holding 99% of the paid-up capital of each of JTPL, GTPL and TAPL. GTPL holds 45.45% and JTPL holds 49.95% of the paid-up capital of TAPL respectively.

Therefore, all the applicant companies are companies under the same management group.

By the proposed Scheme of Amalgamation, the financial resources of the companies will be merged and pooled together leading to a more effective and centralized management and reduction of administrative expenses and overheads which are presently being multiplied because of separate entities.

Further, it is stated in the Petition that the proposed merger will also result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace.

The proposed merger will also increase net worth and the borrowing capacity of the Transferee Company, hence, shall lead to the expansion of its business at much faster rate.

It would also lead to the growth prospects for the personnel and organizations connected with these companies and thus be in the interest and welfare of the employees of the companies concerned and will also be in the larger interest of the stakeholders.

It is further submitted in the petition that the aggregate assets of the Petitioner Companies are sufficient to meet all their liabilities and said scheme will not adversely affect the rights of any of the creditors of the Petitioner Companies in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due.

Vide order dated 04-08-2017 made in the Company Application CA (CAA) No. 280/KB/ 2017 passed by this Tribunal, the requirement of convening of the meetings of equity shareholders and of the creditors of all the Petitioner Companies were dispensed with, in view of their written consents, by way of affidavit, to the Scheme of Amalgamation.

List of the Creditors as on the date of the Order of this Tribunal dated 04-08-2017 and affidavit from each of the Creditors had been filed as per the Order.

In compliance of the said order dated 04-08-2017 of this Tribunal, the Petitioner Companies served notices upon the current creditors i.e. creditors as on the date of passing this order, having outstanding debt amounting to not less than five percent of total outstanding debt of the company as per the list of creditors as on date of passing of the said order, by speed post together with a copy of the Scheme of Amalgamation and the statement required under section 230 of the Companies Act, 2013.

Further, in compliance with the said order of this Tribunal dated 04-08-2017, the notice was also advertised by the Petitioner Companies, once in "Aajkal" Bengali Newspaper and once in "The Business Standard", English Newspaper on 22-08-2017.

In terms of the said order dated 04-08-2017, Notice in form CAA.3 was duly served upon the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Registrar of Companies, West Bengal, the Official Liquidator attached to the Hon'ble High Court, Calcutta, Reserve Bank of India and the Income Tax Department having jurisdiction over the Transferee and the Transferor Companies.

In compliance with Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the Petitioner Companies filed an affidavit of service to this Tribunal.

After such due compliance, the petitioners have made the instant petition bearing C.P. (CAA) No. 755/KB/2017 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation.

Heard the arguments of the Ld. Pr. CS for the petitioner.

Let notice be served as per requirements of sub section (5) of section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal and the concerned Assessing Officer, Income-Tax along with the Chief Commissioner of Income Tax with PAN numbers of the Petitioner Companies,

by hand delivery through personal messenger or by Speed post, or by registered post and E mail, both, and also on the Official Liquidator having jurisdiction over the transferor and transferee companies and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme, by sending the same by hand delivery through personal messenger or by Speed post or by registered post, within seven days from the date of this order for filing their representation, if any, on the petition with 30 days from the date of notice.

The petitioners are to file an affidavit, along with the copy of the notice within 7 days of serving of notice regarding service of the notice.

The petitioners are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their authorized representative, if no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.

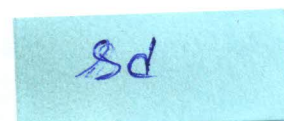
Such notices shall be set under section 230(5) of the companies act, 2013 in Form no. CAA.3 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

Let the advertisement of the hearing of this petition be published once in the English daily, "The Business Standard" and another in the Bengali daily newspaper, "Aajkal", same as was earlier made in first motion, stating the PAN numbers of all the Petitioner Companies, 10 days before the date fixed for hearing under Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The petition is fixed for hearing on 20-03-2018.

Certified copy of this order may be issued, if applied for, upon compliance of all the requisite formalities.



(Jinán K. R.)

Member(Judicial)

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